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AUG 04 2005

OFFICE OF PETITIONS

In re Application of	:	
Laguna, Alvaro	:	
Application No. 10/071,635	:	DECISION GRANTING PETITION
Filed: February 7, 2002	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. 44178.02US1	:	

This is a decision on the petition, filed June 30, 2005, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant non-provisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen-month publication country on January 17, 2003. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen-month publication country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country or under a multilateral international agreement that requires publication of applications 18 months after filing.

A petition to revive an application abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to notify the USPTO of a foreign filing must be accompanied by:

- (1) the required reply which is met by the notification of such filing in a foreign country or under a multinational treaty;
- (2) the petition fee as set forth in 37 CFR 1.17(m); and
- (3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The instant petition has been found to be in compliance with 37 CFR 1.137(b). Accordingly, the failure to timely notify the USPTO of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request, which sets forth the projected publication date of October 13, 2005, was previously mailed on July 6, 2005.

The \$300.00 publication fee will be charged to petitioner's deposit as previously authorized. Applicant is required to pay the publication fee to avoid abandonment of the application even if the application has not yet been published at the time when the publication fee is due. The Office will continue with the pre-grant publication process until a patent actually issues. This is because there are many instances in which the Office mails a notice of allowance in an application but the application does not issue as a patent in regular course. Therefore, the Office will not discontinue the pre-grant publication process until a patent has actually issued. Since the Office cannot discontinue the pre-grant publication process during the last two to four weeks of the publication process, this will result in a few applications being issued as patents and subsequently being published as patent application publications. The Office will refund the publication fee if the application is not published as a patent application publication, but will not refund the publication fee if the application is published as a patent application publication, even if it is published after the patent issues.

Accordingly, applicant may file a request for a refund of the publication fee after four (4) weeks from the issue date of the patent. A request for refund filed before four (4) weeks from the issue date is premature and will be disregarded. Requests for a refund of the publication fee should be directed to the Pre-Grant Publication Division of the Office of Publications at Mail Stop PGPUB.

This matter is being referred to the Publishing Division to await a reply to the outstanding Notice of Allowance mailed June 15, 2005. Failure to timely reply will again result in the abandonment of the application.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3206.



Liana Chase
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy